

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2262.05
COMPLAINT INVESTIGATOR:	Brian Simkins
DATE OF COMPLAINT:	June 24, 2005
DATE OF REPORT:	July 21, 2005
REQUEST FOR RECONSIDERATION:	n/a
DATE OF CLOSURE:	September 19, 2005

COMPLAINT ISSUES:

Whether the MSD of Perry Township and RISE Special Services violated:

511 IAC 7-29-6(c) and (d) by failing to determine whether the student's behavior is the result of deficiencies in the student's individualized education program (IEP) or special education placement at the manifestation determination meeting convened on December 8, 2004.

511 IAC 7-29-5(a) by failing to review the student's existing behavioral intervention plan (BIP) and its implementation before but not later than 10 business days after placing the student in an alternative educational setting in lieu of an expulsion.¹

511 IAC 7-27-7(a) by failing to implement the student's IEP as written, specifically the student's BIP while receiving special education and related services in the alternative setting.

511 IAC 7-27-3(a)(3) by failing to ensure that the case conference committee participants include at least one of the student's general education teachers at the case conference held on April 27, 2005.

511 IAC 7-27-2(a) and (c) by failing to give adequate notice of the case conference committee meeting held on May 19, 2005, and by failing to use other methods to ensure the Complainant's participation.²

511 IAC 7-27-4(c) by failing to utilize the case conference committee meeting to develop, review, and revise the student's IEP on May 19, 2005, by unilaterally developing the IEP without the input of the parent.

FINDINGS OF FACT:

1. The Student is 12 years old and is a student with a health impairment who has been determined eligible for special education and related services.
2. The Student's case conference committee (CCC) meeting convened on December 8, 2004, to conduct a manifestation determination. The Manifestation Determination Report includes, in part, questions regarding whether the IEP meets the Student's needs and what interventions are put in place to allow the Student to succeed in school. The School determined that the

¹ The wording of 511 IAC 7-29-5(a) has been changed from the way it was stated in the notification letter sent to all parties to reflect the actual standard.

² The wording of 511 IAC 7-27-2 has been changed from the way it was stated in the notification letter sent to all parties to reflect the actual standards.

Student's behavior was not a manifestation of the Student's disability. The Complainant signed the CCC/Manifestation Report.

3. The School acknowledges that it did not review the Student's BIP or functional behavioral assessment (FBA) at any time before or after placing the Student in the Alternative Education Program on December 9, 2004.
4. The Student's IEP dated April 23, 2004, does not contain a BIP. However, the IEP does include behavioral goals and objectives.
5. It is undisputed that the Student's teachers at the Alternative Education Program were informed of the Student's IEP. Weekly progress reports were provided while the Student participated in the Alternative Education Program. However, the progress reports state little to nothing regarding the Student's progress towards achieving the goals in the IEP.
6. The Alternative Education Program implements the Levels Program involving the tracking of student behaviors. Privileges are earned or lost based on a student's behavior. A meeting was convened on February 18, 2005, between the Complainant and the Student's teachers to determine how to implement the Student's specific behavioral goals while attending school at the Alternative Education Program. No other documentation was submitted to show whether and to what extent the Student's teachers implemented the Student's IEP.
7. The CCC notice sent on April 25, 2005 for the April 27, 2005 CCC lists one of the Student's general education teachers as a participant. The general education teacher was involved in an accident on April 26, 2005 and was not in attendance at school on April 27, 2005 due to the accident. The CCC Report dated April 27, 2005 does not reflect that any general education teacher was present at the CCC meeting.
8. The Student's CCC reconvened on May 19, 2005 to review and revise the Student's IEP. The Student's teacher of record left voice mail messages for the Complainant on May 3, and 9, 2005 regarding the CCC meeting on May 19. The Complainant called The School to say that she could not attend the CCC meeting on May 19. There is no documentation indicating that written notice was sent to the Complainant for the May 19, 2005 CCC meeting. Furthermore, the School did not use other methods to ensure the Complainant could participate once it was known the Complainant could not attend.
9. The CCC reconvened on May 19, 2005 without the Complainant in attendance. Included in the CCC Report/IEP initiated at the April 27, 2005 CCC meeting is a functional behavioral assessment dated May 16, 2005 and a BIP dated May 19, 2005. The School acknowledges that the BIP was unilaterally developed without the input of the parent.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the School did not fail to determine whether and to what extent the Student's behavior is the result of deficiencies in the Student's IEP or special education placement at the manifestation determination meeting held on December 8, 2004. The CCC/Manifestation Report reflects this determination and is signed by the Complainant indicating agreement. Therefore, a violation of 511 IAC 7-29-6(c) and (d) is not found.
2. Finding of Fact #3 indicates that the School acknowledges that it failed to convene the CCC to develop a functional behavioral assessment or review an existing BIP and its implementation no later than 10 business days after placing the Student in the Alternative Education Program on December 9, 2004. Therefore, a violation of 511 IAC 7-29-5(a) is found.

3. Finding of Fact #4 indicates that the Student's IEP dated April 23, 2004 does not contain a BIP, only behavioral goals and short-term objectives. Findings of Fact #5 and #6 indicate the School has failed to provide documentation indicating whether and to what extent the Student was able to progress towards these goals while attending the Alternative Education Program where a Levels Program was implemented. Therefore, a violation of 511 IAC 7-27-7(a) is found.
4. Finding of Fact #7 indicates that one of the Student's general education teachers did not participate in the CCC meeting held on April 27, 2005. Therefore, a violation of 511 IAC 7-27-3(a)(3) is found.
5. Finding of Fact #8 indicates that the School failed to give adequate notice of the CCC meeting reconvened on May 19, 2005. Additionally, the School made no attempt to use other methods to ensure parent participation. Therefore, a violation of 511 IAC 7-27-2(a) and (c) is found.
6. Finding of Fact #9 indicates that the School acknowledges that the CCC unilaterally developed the Student's BIP without the Complainant's participation and input. Therefore, a violation of 511 IAC 7-27-4(c) is found.

The Department of Education, Division of Exceptional Learners requires «complaintnumber» corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

MSD Perry Township and RISE Special Services shall:

1. Reconvene the Student's CCC to review, revise, and develop a BIP with the input of the Complainant. A copy of the CCC Report/IEP shall be submitted to the Division no later than September 2, 2005.
2. Provide in-service training to all relevant school administrators and special education personnel regarding compliance with 511 IAC 7-29-5. An attendance sheet indicating all who participate, an agenda, and copies of all handouts and materials shall be submitted to the Division no later than September 2, 2004. (**NOTE: The Special Education Director already has at least one in-service scheduled for August 4, 2005 and likely several others for staff will be planned throughout August and September 2005. The Director is on the August 4 agenda to discuss Article 7 discipline issues.)
3. Send a written memorandum to all relevant school administrators and special education personnel regarding compliance with 511 IAC 7-27-2; 511 IAC 7-27-3; and 511 IAC 7-27-4(c). A copy of the memorandum and a list of all who receive it shall be submitted to the Division no later than September 2, 2005.
4. Schedule a meeting with the Principal and other relevant staff at the Alternative Education Program/School to discuss how to ensure the implementation of a student's IEP that includes student-specific behavioral goals and objectives within the Levels Program. An attendance sheet of all who participate, an agenda, and a copy of the minutes shall be submitted to the Division no later than September 2, 2005.